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September 15, 2006

The Honorable Steve M. Mihalchick
Office of Administrative Hearings
Suite 1700
100 Washington Square
Minneapolis, MN 55401

VIA E-MAIL & U.S. MAIL

Re: *In the Matter of a Petition by Excelsior Energy Inc. for Approval of a Power Purchase Agreement under Minn. Stat. § 216B.1694, Determination of Least Cost Technology, and Establishment of a Clean Energy Technology Minimum Under Minn. Stat. § 216B.1693.*
OAH Docket No. 12-2500-17260-2; MPUC Docket No. E-6472/M-05-1993

Dear Judge Mihalchick:

Excelsior files this letter in response to Xcel's Motion to Enforce Protective Order Concerning Trade Secret Designations.

In response to the requests of several parties to revisit its trade secret designations in this case, Excelsior is prepared to withdraw its trade secret designations of all portions of its December 27, 2005 and June 19, 2006 filings, save for third party proprietary data which Excelsior is required by contract to protect (e.g., the Fluor Reports identified as Exhibits F and G to Volume I of the initial filing) and the proposed capacity price and fixed and variable O&M costs under the PPA. Although Excelsior believes strongly that disclosure of these terms would not be in the interest of Xcel customers since it could prejudice ongoing negotiations with project suppliers, Excelsior will not object to public disclosure of the terms if the ALJs and other parties conclude that disclosure of such information would not adversely affect the interests of Xcel's customers. Excelsior will file revised public and trade secret versions of its filings with all parties on or before September 21, 2006.

In addition, Excelsior will review the other documents identified in Xcel's Memorandum (e.g. the DOE Application, Credit Suisse presentations and Pace Global Energy documents) and withdraw all designations consistent with the preceding paragraph. If the ALJs desire, at the conclusion of this process, Excelsior will submit any remaining trade secret designations pertaining to these documents, and their justifications, for in camera review by them.

Finally, if Xcel, or any party with access to Excelsior's non-public versions of responses to data requests, desires Excelsior to review and reconsider a particular designation, Excelsior will meet with that party and do so, and either withdraw the designation or submit it in camera to the ALJs with the justification.

The Honorable Steve M. Mihalchick
Office of Administrative Hearings
September 15, 2006
Page 2

Excelsior is pleased to see Xcel advocating so strongly for the narrowest possible interpretation of the Data Practices Act and related Commission procedures – interpretations that will in the future require much greater disclosure by Xcel and other public utilities than has historically been the case. Excelsior looks forward to a new level of transparency and public discussion in all future resource acquisition proceedings relating to the cost, risk allocation and other impacts of utility self-build proposals versus independent power producer PPA proposals to meet the significant electric power needs of Minnesota in the coming decade.

Very truly yours,

LEONARD, STREET AND DEINARD
Professional Association



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cc: Service List